IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 539 of 2001
(Old No. 3052 of 1997)

Soorvir Singh and others ….Applicants

Versus

State of U.P. ….Opposite Party

Sri Lokendra Dobhal learned counsel for the applicants
Learned A.G.A. appears on behalf of opposite party

Hon'ble B.C. Kandpal, J.

This is a petition under Section 482 Cr.P.C. filed by the applicants/petitioners for the quashing the proceeding of criminal case No. 237 of 1997 State of U.P. Vs. Soorvir Singh and others under Section 4/10 U.P. Protection of Trees in rural and Hill Area Act, 1976 (hereinafter called as a Act) pending in the court of C.J.M. Tehri Garhwal.

Brief facts giving rise to the petition are that the First Information Report was lodged on 27.06.1996 at Police Station Deopayag, District Tehri Garhwal by Station Officer of the police station Deoprayag which was registered as crime No. 46 of 1996 under Section 4/10 Act against the petitioners before the court of C.J.M. Tehri Garhwal. After the submission of chargesheet filed by the police before the court of C.J.M., Tehri Garhwal, cognizance was taken in the matter and the C.J.M. summoned the petitioner to face the trial.

Heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners has submitted that in view of the Government Order dated 08.11.1982 a family residing in the hilly areas has a right to cut one tree in a year for

the persona purpose and it would not be necessary to obtain permission from the competent authority for cutting tree.

Learned counsel for the petitioners has also submitted that the First Information Report dated 27.06.1996 and the order passed by the learned C.J.M. Tehri Garhwal for summoning the petitioners on 06.02.1997 shows clear abuse of process and is liable to be quashed.

Perusal of the record shows that the petitioner no. 4 Betal Singh moved an application before the District Magistrate Tehri Garhwal that his family cut the tree for the construction of their private house as the tree was standing in their own field. The District Magistrate after receiving the application directed his subordinates i.e. Sub-Divisional Magistrate, Kirti Nagar, Tehri Garhwal to investigate the matter and take necessary action. Thereafter, Supervisor Kanoongo investigated the matter and submitted the report before the Sub-Divisional Magistrate, Kirti Nagar, Tehri Garhwal. After having perused the report of the Supervisor Kanoongo the Sub-Divisional Magistrate Kirti Nagar, Tehri Garhwal submitted his report before the District Magistrate stating therein that the tree which is alleged to have been cut by the petitioners was standing in the Bhoomidhari land belonging to the petitioners.

After having perused the aforesaid report submitted by the Sub-Divisional Magistrate, the District Magistrate vide his letter dated 16.07.1996 intimated the Station Officer, Police Station, Deoprayag that in hilly areas, one family has a right to cut one tree and for this felling purpose the family is not suppose to seek permission from the competent authority.

Perusal of the counter affidavit filed by the Station Officer, Deoprayag shows that he has not denied the averments made in the petition satisfactorily.

To my mind the averments made in the counter affidavit are baseless. The Station Officer in the counter affidavit could not deny the existence of the letter and the inquiry report made by the competent authority in this regard.

The perusal of the Government Order dated 08.11.1982 reveals that the family residing in hilly areas has a right to fell one standing tree in a year for the domestic purpose. It has also been stated in the Government Order that the family will have to inform the competent authority 15 days prior to the felling of tree.

From the perusal of the aforesaid Government Order this thing is quite clear that one family residing in the hilly area has a right to fell one standing tree in a year. In this context, the proviso of Section 5 of the aforesaid Act would be necessary to reproduce here.

> *"Provided further that except in such area as may be notified by the State Government in this behalf such permission shall not be required for the felling of any tree with a view to appropriating the wood or leaves thereof for bona fide use for purposes of fuel, fodder, agricultural implements or other domestic use."*

It has, therefore, quite clear that for felling one standing tree the permission would not be required for the persons living in the hilly areas. The record further shows that the petitioner intimated the District Magistrate, Tehri Garhwal that they had cut a tree standing in their field for which they are entitled. But the police has been unnecessarily harassing them and on this

application the District Magistrate instituted the inquiry and subsequently, the Sub-Divisional Magistrate submitted the report that the tree cut by the petitioner was standing in their field.

Hence keeping in view the aforesaid facts, I am of the considered opinion that the petitioners have not committed any offence. In case, if they had cut or remove a tree for their domestic purpose then they have not committed any violation of the provision of 4/10 Act.

For the reasons discussed above I come to the conclusion that the proceedings in criminal case no. 237 of 1997 State of U.P. Vs. Soorvir Singh and others under Section 4/10 U.P. Protection of Trees in Rural and Hill Area Act, 1976 pending in the court of C.J.M. Tehri Garhwal are hereby quashed.

Accordingly, the petition is allowed. First Information Report dated 27.06.1996 and the subsequent proceedings arising out of the aforesaid report i.e. chargesheet as well as further proceedings pending in the court of C.J.M., Tehri Garhwal are quashed.

July 31st 2004 **(B.C. Kandpal, J.)**

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